PERTAMA MALAYSIA FINANCE BHD.

v.

GOH KUAN JOO

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[ORIGINATING SUMMONS NO. 24-(31)-320-88]
7 FEBRUARY 1990

LAND LAW: *Application by plaintiff for an order for sale under s. 256 National Land Code - Legal charge - Meaning of "cause to the contrary" within s. 256 National Land Code.*

On 1 September 1987 the defendant by a legal charge, charged to the plaintiff 2 pieces of property known as Lot No. 001720, s. 2, Bandar Georgetown, Daerah Timur Laut, (collectively called "the said property") as security for repayment on demand of a housing loan of RM300,000. The defendant then defaulted in repaying the said loan and interest.

On 8 January 1988, plaintiff through their solicitors issued a notice to the defendant demanding repayment within 14 days the arrears of interest in respect of the principal sum of RM300,000. Despite this notice the defendant failed to make repayment causing the plaintiff to issue a statutory notice under Form 16D claiming repayment of the full sum amounting to RM317,097.37 as at 31 January 1988. Consequently the plaintiff filed this originating summons seeking an order of sale of the said property.

The defendant in his affidavit affirmed on 25 September 1989 stated that that was 'cause to the contrary' within the meaning of s. 256(3) National Land Code. The defendant alleges that there was improper dealings committed by the plaintiff in connection with the release of the redemption sum of RM200,000. The defendant also alleges improper conduct on the part of Messrs. Lim Kim Chuan & Co. and the plaintiff's manager.

The defendant *inter alia* states that sometime in March 1985 the plaintiff approved a loan of RM180,000 to one Yong Peng Thong trading as Lever Trading Co. On 5 April 1985 the firm was sold to Chen Kuen Wong and on or about 11 June 1985 the property known as lot 374 Pecahan Bandar 8 (which is part of the said property) was charged to the plaintiff for RM180,000. The defendant alleges that the plaintiff's manager Encik See Toh Swee Weng approached him to buy the above-mentioned lot for RM170,000 and he agreed to do so upon the plaintiff's granting him a loan of RM250,000. The defendant further alleges that on or about 10 July 1987 the plaintiff unilaterally increased his loan from RM250,000 to RM300,000 to be secured by a charge on the said property (which now includes lot 1720, s. 2 Bandar Georgetown).

The sum of RM300,000 was released to Messrs. Lim Kim Chuan & Co. of which RM200,000 was released to the plaintiff to redeem the charge created by Chen Kuen Wong to the plaintiff in respect of Lot No. 374.

The plaintiff filed 2 affidavits in reply. *Inter alia* Encik See Toh Swee Weng denied that he approached the defendant to purchase Lot 374 and Encik Ng Sim Hock stated that the allegations of the defendant are irrelevant in that there was a proper letter of offer and acceptance and proper execution of the documents.

Encik Ng conceded that the sum of RM300,000 was released to Messrs. Lim Kim Chuan & Co. to enable them to redeem the 2 pieces of property and therafter to charge them to the plaintiff as security for the loan of RM300,000.

Held:

[1] The defendant failed to show the existence of 'cause to the contrary' within the meaning of s. 256(3) National Land Code.

[2] The onus is on the defendant to show cause to the contrary within s. 256(3) National Land Code and this was not discharged.

[Order accordingly.]

Case referred to:

Keng Soon Finance Bhd. v. MK Retnam Holdings Sdn. Bhd. & Anor. [1989] 1 CLJ (Rep) 1

Legislation referred to:

National Land Code 1965, ss. 256, 256(3)

For the plaintiff/applicant - Cheah Choo Kheng; M/s. B.C. Teh & Cheah
For the defendant/respondent - Tan Bak Lee; M/s. Tan Bak Lee & Co.

JUDGMENT

Mohamed Dzaiddin J:

This is an application by the plaintiff for an order for sale under s. 256 National Land Code 1965.

On 1 September 1987 the defendant by a legal charge Jilid No. 363, Folio 133 Presentation No. 7285/87, charged to the plaintiff two pieces of property known as Lot No. 001720, s. 2, Bandar Georgetown, Daerah Timur Laut bearing title Suratan Hak Milik Sementara HS(D) 497 and Pegangan No. 374 in Pecahan Bandar 8, Daerah Timur Laut, Pulau Pinang for Perakuan Pendahuluan Mengenai Hak Milik (collectively called "the said property") as security for repayment on demand of a housing loan of RM300,000. The defendant had defaulted in repaying the said loan and interest. On 8 January 1988, the plaintiff through their solicitors issued a notice to the defendant demanding repayment within 14 days the arrears of interest in respect of the principal sum of RM300,000. Despite the said notice the defendant had failed to make any repayment. In the result the plaintiff issued a statutory notice under Form 16D claiming repayment of the full sum amounting to RM317,097.37 as at 31 January 1988. Consequently, the plaintiff filed this originating summons seeking an order for sale of the said property.

This application was opposed by the defendant who filed an affidavit affirmed on 25 September 1989 (Lampiran 11) tending to show of the existence of "cause to the contrary" within the meaning of subsection (3) of s. 256 above. The gist of his allegations was that there was improper dealings committed by the plaintiff in connection with the release of the redemption sum of RM200,000. The defendant deposed that sometime in March 1985 the plaintiff approved a loan of RM180,000 to one Yong Peng Thong trading as Lever Trading Co. On 5 April 1985 Yong Peng Thong sold the firm to another person Chen Keun Wong for RM3,000 and on or about 11 June 1985 the property known as Lot 374 Pecahan Bandar 8 (which is part of the said property) was charged to the plaintiff for RM180,000 which said loan was granted to Lever Trading Company. The defendant alleged that on or about 16 February 1987 the

plaintiff's manager See Toh Swee Weng approached him to buy the above-mentioned Lot for RM170,000. He agreed to do so upon the plaintiff granting him a loan of RM250,000. On 8 April 1987 he executed the loan documents at the office of Messrs. Lim Kim Chuan and Co., Advocates & Solicitors. He also signed the sale and purchase agreement in respect of the said property wherein it was stated that he had paid RM17,000 toward the purchase price with a balance of RM150,000 to be paid within three months from the date thereof.

The defendant further alleged that on or about 10 July 1987, the plaintiff unilaterally increased his loan from RM250,000 to RM300,000 to be secured by a charge of the said property (which now includes Lot 1720, s. 2 Bandar Georgetown). The sum of RM300,000 was released to Messrs. Lim Kim Chuan & Co. on 14 August 1987, who it seemed utilised a sum of RM99,358.25 to redeem the charge granted by the Visia Finance Bhd. to the defendant in respect of Lot 1720. The defendant also alleged that the said solicitors released a further sum of RM200,000 to the plaintiff to redeem the charge granted by Chen Keun Wong to the plaintiff in respect of the other property, Lot No. 374. This appears to be the crux of his complaint. He maintained that he had never agreed to pay from this loan the excess of RM47,000 in order to redeem Lot 374.

The second portion of his affidavit appears to contain allegations of improper conduct both on the part of the solicitors, Messrs. Lim Kim Chuan & Co. and the plaintiff's manager. In so far as the plaintiff was concerned, the defendant did complain to Bank Negara Malaysia, who had given a suitable reply *vide* a letter dated 23 May 1988. Perhaps, the defendant ought to have filed a similar complaint against Messrs. Lim Kim Chuan & Co. to the Bar Council.

The plaintiff filed two affidavits in reply, one was affirmed by Encik See Toh Swee Weng (lampiran 12) and the other by Encik Ng Sim Hock (lampiran 13). Encik See denied the allegations of the defendant that he approached the latter to purchase Lot 374. He denied that he was ever involved in negotiations in respect of the price of the said Lot. Encik Ng Sim Hock deposed that the allegations of the defendant were irrelevant to the present application. He maintained that the plaintiff's letter of offer dated 19 February 1987 to the defendant in respect of his application of the fixed loan of RM250,000 and the subsequent letter of offer increasing the loan to RM300,000 dated 10 July 1987 were accepted and acknowledged by the defendant. Further, he stated that the defendant had requested for RM300,000 and following the confirmation the charge documents were executed on 1 September 1987. In addition, he stated that the plaintiff never executed any loan documentation with the defendant on 8 April 1987 as alleged.

Encik Ng conceded that the sum of RM300,000 was released to Messrs. Lim Kim Chuan & Co., who were acting as solicitors for the defendant to enable them to redeem the two piece of property and thereafter to charge them to the plaintiff as security for the loan of RM300,000. What the plaintiff had done was to release the said sum of RM300,000 to Messrs. Lim Kim Chuan & Co. As for the property Holding No. 374. Lastly, Mr. Ng stated that what Messrs. Lim Kim Chuan & Co. had done with RM47,000 was no concern of the plaintiff.

Conclusion

After examining the opposing affidavits and considering the submissions of Counsel, I am satisfied that the defendant has failed to show the existence of "cause to the contrary" within the meaning of s. 256(3) National Land Code 1965. Based on the accompanying exhibits, I am satisfied that the loan of RM300,000 was granted by the plaintiff to the defendant based on a proper letter of offer and acceptance and followed by proper legal documentations. The

crux of the matter is that the defendant had failed to make monthly repayments as required under the terms of the annexure to the legal charge. The defendant had tried to bring into the picture some extraneous matters wholly unconnected with the granting of the loan of RM300,000. At any rate, I gave some thoughts to these allegations of the defendant, but I find they have been suitable rebutted by the plaintiff. If at all some of these allegations were true, in my opinion, the defendant is at liberty to pursue further through a different forum. Therefore after confining myself to the plaintiff's present application for an order for sale I am satisfied that the defendant had not shown that the action taken by the plaintiff is contrary to any rule of law or quiry.

The Privy Council in *Keng Soon Finance Bhd. v. MK Retnam Holdings Sdn. Bhd. & Anor.* [1989] 1 CLJ (Rep) 1 held that s. 256(3) of the National Land Code is mandatory. The Court shall order a sale unless it is satisfied of the existence of cause to the contrary. It states that granted these words have been construed in Malaysia as justifying the withholding of an order where to make one would be contrary to some rule of law of equity, they clearly cannot extend to enabling the Court to refuse relief simply because it feels sorry for the borrower or because it regards the lender as arrogant, boorish or unmannerly.

Following the above principle and based on what I have stated earlier there was nothing to suggest that the plaintiff has acted unreasonably with regard to the granting of the loan of RM300,000 or in the process had conducted themselves improperly leading to the filing of this application for an order for sale. Accordingly, I make the following orders as prayed in this application:

1. Amount due as to date: RM405,646.14.
2. Date of auction: 22 May 1990.
3. Further directions to apply to Penolong Kanan Pendaftar.
4. Costs to the plaintiff.

Also found at [1990] 1 CLJ 965